

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Vinodh Francis Pushparaj

Confirmation No.: 4759

Serial No.: 10/767,392

Examiner: Melvin C. Marcelo

Filed: January 28, 2004

Group Art Unit: 2416

For: PREDICTIVE, INTELLIGENT ROUTING OF CALLS TO USERS

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ARGUMENTS IN SUPPORT OF PRE-APPEAL CONFERENCE**

The Examiner's assertions that the applicant's claims are obvious in view of Horvitz go far beyond the actual teachings of Horvitz and are riddled with hindsight bias. Thus, the Examiner has committed clear error in maintaining the rejections and the applicant requests that the Panel reverse the rejections and allow the applicant's claims.

As an example, Horvitz teaches that whether an alert is sent to a user is determined based on a probability distribution of the likelihood that a user will want to be disturbed. *See* Horvitz Abstract. Horvitz states at one point that this determination can include information provided by the user, but Horvitz does not give any further indication of what this information provided by the user is. *See* Horvitz col. 7, lines 16-26. From these bare-bones teachings, the Examiner proposes that it is obvious to modify Horvitz such that its system

operates in three modes: a predictive mode (alert is sent based solely on the probability distribution), a combination mode (alert is sent based on the probability distribution and a user preference), and a preference mode (alert is sent based solely on the user preference). Next, the Examiner proposes that it is obvious to again modify the system of Horvitz so that the user actually selects which mode to operate in. But none of these teachings are actually present in Horvitz. The entire disclosure of Horvitz is directed to a system that uses a probability distribution to automatically determine whether to send an alert, and yet the Examiner proposes it is obvious to modify Horvitz to ignore the probability distribution. Thus, the Examiner's reasoning can only be based on hindsight bias, and therefore represents clear error.

Building on the Examiner's proposed obvious features, as described above, the Examiner next proposes that it would be obvious to modify Horvitz to include "accessing an indicator specifying at least one of a predictive mode, a combination mode, and a preference mode." As described above, Horvitz does not teach any modes of operation; it only teaches a single approach in which a probability distribution is used to determine whether or not to send an alert. In view of the complete lack of any teachings in Horvitz regarding modes of operation, the Examiner asserts that it is obvious to modify Horvitz to include accessing an indicator specifying what mode is selected. Therefore, once again the Examiner has committed clear error by relying solely upon hindsight bias to establish obviousness.

The Examiner also asserts that it is obvious to modify Horvitz such that alerts are sent to a plurality of devices. However, this proposed obviousness ignores the fact that the entire disclosure of Horvitz is based on determining whether a user wants to be interrupted by an alert while they are working on a particular device. Horvitz specifically teaches that the

determination can be based on what the user is actually doing on the particular device (such as what programs the user is interacting with on a computer). *See* Horvitz col. 7, lines 27-48. Moreover, there is nothing in Horvitz to suggest that its system calculates a probability distribution with respect to whether the user desires to be interrupted on multiple devices at the same time. Therefore, there is no reason to modify Horvitz to send alerts to multiple devices as the Examiner suggests.

Next the Examiner suggests that it is obvious to modify Horvitz to determine at what device, among a plurality of devices, the user answers an alert. Once again, Horvitz does not teach sending alerts to multiple devices, so it would not be obvious to modify Horvitz so that it determines at which device an alert is responded to. In Horvitz, the alert will either be responded to on the device it was sent to or not. There is no need to determine on which device an alert was responded to because the system of Horvitz already knows where the alert was sent and whether or not it was responded to. Therefore, the Examiner's proposed obviousness is another example of hindsight bias and clear error.

Several dependent claims recite features related to success and failure thresholds and ranges. None of these concepts are discussed in Horvitz. But, once again, the Examiner proposes that these are obvious modifications of Horvitz, with no support other than the Examiner's own opinion. Horvitz does not teach that success rates are tracked, that success rates are compared to a failure threshold, or that a user is prompted to make changes to the system in response to the failure threshold. Horvitz simply does not envision any of these concepts. Therefore, the Examiner has committed clear error by asserting that these features are obvious in view of Horvitz without any support other than the Examiner's opinion.


As a final example, claim 18 recites “repeating the determining and sending processes until a success occurs.” The Examiner argues that it would have been obvious to modify the system of Horvitz to keep trying for a critical message. However, this is contrary to the teachings of Horvitz. The whole point of the system of Horvitz is to avoid distracting a user when they do not want to be distracted. Therefore, continuing to send alerts to a user who does not want to be distracted is not within the scope of Horvitz and it is contrary to the teachings of Horvitz. Again, the Examiner has injected hindsight bias into the analysis of Horvitz and improperly rejected this claim.

For each of the reasons discussed above, the applicant requests that the Panel reverse the Examiner’s rejections and allow the applicant’s claims.

**Customer No. 20575**

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

  
\_\_\_\_\_  
Timothy E. Murphy  
Reg. No. 59,092

210 SW Morrison Street  
Suite 400  
Portland, OR 97204  
503-222-3613